HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2(b)

Description of the Case.

Criminal Appeal no. 584 of 2001
(old 24 of 1991)

Govind Singh …Appellant

Vs.

State of U.P. ..Opp. Party.

Approved for reporting.

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Not approved for reporting.

Date of Decision 27th August 2004.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 584 of 2001
(Old No. 24 of 1991)

Reserved

Govind Singh S/o Sri Beer Singh
R/o Village Panti
District Delik Nepal
Anchal, Nepal
At present Labourer
Mohan Singh Contractor
R/o Village Kot Patwari Circle
Jakhpatyu Tehsil Tharali
District Chamoli …Appellant

Versus

State …Opposite Party /Respondent

Ms. Geeta Parihar learned counsel for the appellant
Sri G.S. Sandhu learned A.G.A. for the State assisted by Sri P.S. Saun

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered By Hon'ble B.C. Kandpal, J.)

This is a criminal appeal arising out against the judgment and order dated 11.12.1990 passed by Sessions Judge, Chamoli in S.T. No. 14 of 1990 State of U.P. Vs. Govind Singh convicting the appellant Govind Singh under Section 302 I.P.C. and sentencing him to undergo life imprisonment.

Brief facts of the prosecution case which give rise to this appeal are that on 04.06.1990 at 8:30 PM one Premlal was murdered by the accused/appellant Govind Singh (hereinafter called as an appellant) before the cowshed of Bhupal Singh.

Perulal brother of the deceased Premlal lodged the First Information Report at Patti Patwari Nalgoan, District Chamoli on 06.06.1990 at about 11:00 pm.

After the registration of the case the concerned Patwari reached at the spot and found the dead body of Premlal. Thereafter, Patwari prepared the inquest and sent the dead body for post mortem.

The autopsy of the deceased Premlal was conducted by Dr. V.H. Rizvi on 08.06.1990 at 4:15 pm. The Doctor opined that the death was caused 90 to 96 hours prior to the time of autopsy.

The Doctor found following ante mortem injuries on the person of the deceased Premlal:-

1. Lacerated wound 3cm X 2.5cm into muscle deep over Forehead.
2. Lacerated wound 2cm x 2cm into muscle deep below Left eyebrow.
3. Multiple abrasion in front of neck measuring size 2cm X 0.5cm into 4cm x 2.5cm
4. Abrasion on right side of chest inside.
5. Multiple abrasion on right leg measuring 1cm X 0.5cm into 3cm X 1cm
6. Multiple abrasion on both forearms measuring 1cm X 0.5cm into 3.5cm X 1cm

On internal examination Doctor, found that the ribs of the right side chest was fractured. Trachea was compressed. The liver was also lacerated. The Doctor opined that the death of Premlal was caused due to shock and hemorrhage as a result of ante mortem injuries.

P.W. 5 Hoshiyar Singh – Patwari conducted the investigation and after completing the same, submitted the chargesheet against the appellant under Section 302 I.P.C. on 28.07.1990.

After submission of the chargesheet, the appellant was committed to the court of Sessions and he appeared before the court of Sessions Judge in order to face his trial.

Learned Sessions Judge vide order dated 01.10.1990 framed the charge under Section 302 I.P.C. against the appellant. The appellant denied all the charges leveled against him and claimed the trial.

The prosecution in order to support its case produced P.W. 1 Dr. V.H. Rizvi (post Mortem), P.W. 2 Perulal, P.W.3 Kamlalal, P.W. 4 Premram (all the eye witnesses) and P.W.5 Hoshiyar Singh (Investigating Officer).

After the evidence of the prosecution was over, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant did not adduce and evidence in his defence.

Learned trial court i.e. Sessions Judge, Chamoli after having perused the entire evidence on record and hearing learned counsel for the parties was pleased to convict the appellant Govind Singh under Section 302 I.P.C. and sentenced him for life imprisonment vide judgment and order dated 11.12.1990.

Feeling aggrieved by the aforesaid impugned judgment and order the convict Govind Singh preferred the appeal before the Hon’ble Allahabad High Court which ahs subsequently been transferred to this court after creation of Uttaranchal, for disposal.

We have heard learned counsel for the parties and perused the record.

The first point, which has been raised by the learned counsel for the defence before us that the First Information

Report in the present case has been lodged by P.W. 2 Perulal with an inordinate delay. It is contended that the occurrence is alleged to have taken place on 04.06.1990 at 8.30 pm while the First Information Report has been lodged on 06.06.1990 and no satisfactory explanation has been extended for lodging the delayed F.I.R.

We failed to appreciate the argument, as P.W.2 Perulal has satisfactorily explained the delay in his deposition before this Court. He has deposed that he was posted on his duty at Gwaldam and could get information with regard to this incident on 05.06.1990 through one Baliram at about 11:00 – 12:00 noon. After having received this information, this witness went to Nalgoan and got the report scribed. Thereafter, he went to Patwari Chauki but he did not find Patwari over there. This witness again on the next day went to Kanoongo Chauki, Narayan Bagar and handed over the report to Kanoongo on 06.06.1990. Thereafter he went to Jakhapatiyon Patwari Chauki and lodged the report over there. This witness has stated that he reached at the aforesaid Patwari Chauki at about 10:00 – 10:30 am. The explanation extended by this witness appears to be quite satisfactory. A person who has been posted on his service at a distant place would obviously take sometime to reach to the place where the report is to be lodged and the time taken by this witness in lodging the First Information Report does not appear to be inordinate.

Learned counsel for the appellant has cited **1996 (33) ACC 828 Allahabad High Court (Division Bench) State of U.P. Vs. Prem Pal,** in order to show that the delay in lodging the FIR and also in starting the investigation, if not

Satisfactorily explained then the same are sufficient to create a reasonable doubt in the mind of the court.

We have gone through the judgment cited before us carefully and we are of the opinion that the judgment cited before us does not apply to the facts and circumstances of the present case. The facts in the cited case were that the FIR was found ante timed and investigation was also faulty. Another factor in that case was that the material for testing the veracity of evidence was itself recorded with inordinate delay and no satisfactory explanation of the delay was extended by the prosecution. While in the instant case the situation is different. The FIR can neither be said anti timed, nor with inordinate delay.

Learned counsel for the appellant has further **cited 2003 Supreme Court Cases (Criminal) 751 Rajeevan Vs. State of Kerala** on the point that if the delay has been caused in lodging the FIR then there is a sufficient reasons to doubt the genuineness of the FIR.

We have also carefully gone through the judgment cited above before us and we are of the view that this judgment also does not help to the appellant, as we have already observed that in the instant case the delay has been satisfactorily explained and the same is not going to cause any doubt pertaining to the genuineness of the FIR. The facts in the cited case were that the other circumstances were also not found to be satisfactory which were sufficient to adversely affect the prosecution case. But in the instant case, there is nothing adverse in the prosecution case, which may cause any doubt with regard to the genesis of the prosecution version.

In a criminal case mere delay in lodging the First Information Report does not discredit the prosecution case unless the prosecution case is not found trustworthy on other courts. We are therefore, of the view that in the present case no delay has been caused in lodging the First Information Report.

It has further been submitted by the learned counsel for the appellant that the witnesses produced by the prosecution in the present case are either interested or relatives to the deceased. Therefore, their testimony does not inspire confidence. It has been submitted that P.W. 3 Kamlalal is the relative of the deceased i.e. brother and P.W. 4 Premram is a witness who is in enimical terms with the deceased, therefore, the trial court by placing the reliance on the testimony of these two highly interested witnesses has committed manifest error and in any case the conviction could not be warranted on the basis of the testimony of the aforesaid two witnesses.

Again we find that the argument is devoid of any force.

There are catena of decisions on this aspect that the Prosecution case cannot be discarded on the basis of the interested or related witnesses. It is only that the testimony of the interested or related witnesses is to be scrutinized strictly in order to reach to a definite conclusion.

Perusal of the evidence on record shows that the prosecution has produced two eye witnesses in the present case i.e. P.W. 3 Kamlalal and P.W. 4 Premram. The evidence of P.W. 3 Kamlalal reveals that he has clearly depose in his cross-examination that village of the deceased is at a distance of 7 kilometers from his village, He has also deposed that the deceased did not belong to this family as he was a resident of

another village Rains and he was his brother merely on account of village relation. Therefore, in view of this specific deposition, it cannot be said that this witness is either interested or related witness to the deceased. The complainant P.W. 2 Perulal who is the real brother of the deceased Premlal S/o Late Sri Kanhaiyalal, R/o Village Rains while P.W. 3 Kamlalal S/o Sri Gariblal is resident of another village, namely, Kothli. Therefore, under any stretch of imagination, it cannot be observed that P.W. 3 Kamlalal produced by the prosecution is either interested or related witness.

Likewise P.W. 4 Premaram is also resident of village Udaigri and he is admittedly not related to the deceased in any manner. A suggestion has been put by the defence to this witness that he had some heated altercation with the accused/appellant Govind Singh. This witness and the accused/appellant Govind Singh used to work under the same contractor. This suggestion in act is not sufficient or conclusive in order to reach to a definite conclusion that he is either in inimical terms with the accused/appellant or has any reason to falsely implicate him in this crime. Both these witnesses have categorically stated in their deposition that they were present at the seen of the occurrence and when they reached near the cowshed Bhupal Singh then they heard that some persons were quarreling and when they reached at the place of the occurrence then they saw that Premlal was lying on the earth and accused/appellant Govind Singh was kicking him. P.W. 3 Kamlalal has stated that as soon as he tried to capture appellant Govind Singh from behind, the appellant Govind Singh Kicked Premlal due to which he fell into deep ditch and died.

P.W. 4 Premram has also stated that at the time of the occurrence he heard some heated altercation between the appellant Govind Singh and the deceased Premlal as Govind Singh was saying to Premlal, as to why he was talking rubbis. On this, deceased Premlal hurled an abuse to appellant Govind Singh. This infuriated the appellant Govind Singh and he hit and he hit with fist on deceased Premlal due to which he fell down. Thereafter, when the witness tried to apprehend the appellant, he again kicked the deceased Premlal due to which he fell down in a deep ditch and died.

Perusal of the evidence of both the eye witnesses produced by the prosecution clearly establishes that it was the accused/appellant Govind Singh and none else who caused injuries on the person of deceased Premlal, which ultimately resulted his death. The medical evidence produced by the prosecution shows that the deceased died on account of multiple injuries caused on his person.

We, therefore, come to the conclusion that the genesis of the prosecution case is established beyond reasonable doubt and the involvement of the appellant in the present case for causing the injuries on the person of the deceased Premlal, which ultimately resulted his death, cannot be ruled out.

However, with regard to this aspect of the matter as to whether the appellant has been rightly convicted by the court below under Section 302 I.P.C., is again to be assessed in the light of the evidence produced by the prosecution. The evidence of the witnesses produced by the prosecution clearly show that it was a grave and sudden provocation to the appellant as prior to this incident there was heated altercation between the deceased Premlal and the appellant Govind Singh

and the deceased hurled filthy abuse which provoked him and he beat the deceased with fist and kicks due to which the deceased fell down in a deep ditch and ultimately died on account of injuries sustained by him. Therefore, in view of the fact that the entire incident happened pursuant to a quarrel between the deceased and the accused. Hence, in the light of the evidence adduced by the prosecution it could be safely presumed with the appellant had no deliberate intention to cause the death of Premlal.

Under the aforesaid circumstances, we do not think that an offence under Section 302 I.P.C. had been made out against the appellant Govind Singh. As the incident was the result of a sudden quarrel between the deceased Premlal and the appellant Govind Singh and in that melee, the appellant hit the deceased with fist and kicks which resulted injuries and on account of giving a kick blow to the deceased Premlal, the deceased ultimately fell in a deep ditch which resulted in his death. In this background, it is difficult to hold the appellant Govind Singh committed the offence of murder and the offence would thus only come under Section 304 Part II I.P.C.

We therefore, set aside the conviction of the appellant Govind Singh under Section 302 I.P.C. and instead convict him under Section 304 Part-II. IPC.

We are informed that the appellant has been undergoing imprisonment ever since the date of the Sessions Court’s judgment, which was pronounced on 11.12.1990. We, therefore, hold that the sentence already undergone by the appellant is sufficient to meet the end of justice.

In the circumstances of the case, appellant Govind Singh is directed to be released forthwith, if not required in any other case.

The appeal would thus stand partly allowed accordingly.

(B.C. Kandpal, J) **(M.M. Ghildiyal,J)**

August 27, 2004
ASWAL